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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,307	12/19/2001	Luther B. Stoddard	BURFC18414	6796

7590 04/15/2003

CRUTSINGER & BOOTH  
Suite 1950  
1601 Elm St.  
Dallas, TX 75201

EXAMINER

KIM, EUGENE LEE

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/15/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/029,307		STODDARD ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Eugene Kim		3721	

-- Th MAILING DATE of this communication app ars on th cover sheet with the correspond nc address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

1. Claims 7 and 13 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 7 and 11 of copending Application No. 09/701478.

This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 5-7, 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over . Davis (CA 2064270) in view of Andersson et al (#5,155,799). Davis substantially shows the claimed method and apparatus including flattening a neck portion, gathering the flattened portion and attaching a reusable closure 25 to the neck. Davis also shows

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belt means 15 , brush means 13 and perforating means as claimed. Figure 2 shows the sealing means 17 and gripping means 15 to grip the end while sealing. Davis does not show the heating means as claimed. Davis shows heating means 17 to seal the web but does not show the hot air means as claimed. Andersson et al teach the concept of sealing webs using heated air means. Andersson et al disclose that hot air has advantages with regard to rapid and concentrated heating (col 2 lines 8+). The heated air is disclosed as having a temperature range between 300 and 500 degrees Celsius. Davis also discloses that the hot air is distributed to two nozzles 7. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Davis with hot air means as taught by Andersson et al to provide the advantages with rapid and concentrating heating means. Regarding the location of parts, such as, the location of air dispensers/manifolds, the examiner notes that little patentable weight is given to the location of parts unless there is some criticality or unexpected result from the location. See in re Japikse, 86 USPQ 70 (CCPA 1950). Regarding the temperature as claimed, Andersson et al show a temperature range as discussed supra. Optimum ranges via experimentation are known and little patentable weight is given unless the particular range imparts new and unexpected result, which are different in kind, and not merely degree. See in re Dreyfus, 22 CCPA (Patents) 830, 73 F.2d 9312; in re Waite et al, 35 CCPA (Patents) 1117, 168 F.2d 104. Regarding the two seals as claimed, Davis discloses a seal 6a and an upper seal 19 wherein a perforation is immediately beneath heat seal 19 (p. 7 2<sup>nd</sup> paragraph). Therefore, the perforation is in between seal 19 spaced apart seal 6a which reads on the current claim 8. The hard seal 19 is removed

with perforation. Regarding the diverter valve as claimed, Andersson et al disclose two nozzle manifolds 7 that are blowing and that the nozzles/manifolds are connected by a control unit to apply the desired amount of air flow rate to the two manifolds/nozzles. This is a mechanical equivalent to applicant's diverter valve. Furthermore, examiner takes official notice that diverter valves are well known in the art. Examiner takes official notice that cold seals are well known as well.

4. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Andersson et al as applied to the claims above, and further in view of Forman (#5,937,615). Davis in view of Andersson et al do not show a second sealed strip being spaced away from the first sealed strip with perforations in between. Forman shows a first sealed end 21b in figure 1 with perforations and a second sealed strip 22 to have a tamper resistant closure and to have a reclosable mechanism. It would have been obvious to one of ordinary skill in the art at the time of the invention to further provide Davis in view of Andersson et al with a second sealed strip as taught by Forman to have a reclosable mechanism or the like.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

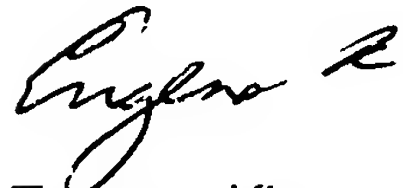
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Kim whose telephone number is (703)308-1886. The examiner can normally be reached on Tuesday-Friday 7:30 a.m - 6:00 p.m.

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The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

A handwritten signature in cursive script, appearing to read "Eugene Kim", with a stylized flourish at the end.

Eugene Kim  
April 4, 2003